

MODEL DECLARATION OF COVENANTS AND RESTRICTIONS

The following "Model Declaration of Covenants and Restrictions" document is provided for drafting purposes. Please check the Savannah District, Regulatory Branch web site in order to view and access the most current draft restrictive covenant language and instructions. The web site is located at: <http://www.sas.usace.army.mil>. Select the yellow box entitled, "Permit Info." Scroll down under "Savannah District Regulatory Publications" until you see the "Declaration of Covenants and Restrictions" file and the "Instructions to the Declaration of Covenants and Restrictions" file. The web site is generally updated yearly. Do not execute and record the Declaration and exhibits until approved in writing by the Office of Counsel, Corps of Engineers, Savannah District.

At the top of the page, provide the name and mailing address of the attorney and/or law firm for purposes of notice to the Clerk of the Superior Court, and for purposes of receipt by mail at such time as it is recorded.

Please Cross-Reference To:
Deed Book _____
Page _____
_____ County,
Georgia Land Records:

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is hereby made by _____, the undersigned Declarant. Declarant is owner in fee simple of a certain tract of real property in (County), Georgia. The description of said Property is more particularly described in Exhibit "A" hereto attached and made a part hereof. The Covenants hereinafter stated shall apply to said Property. This tract of land is (Note: State whether the property being placed in the restrictive covenant is a portion of, or the same property) having been conveyed on (date) from (name of Grantor), to (name of Grantee,) and recorded in (County), Georgia, at Book (number), Page (number), in the Office of the Clerk of Superior Court and is by reference incorporated herein for a description of all other legal purposes. (Cite all grantor/grantee conveyances if more than one owner by book and page numbers.)

Insert the name/s of the owner/s of the property. The name should be the same as shown on the deed of title. Provide a copy of the deed of title. If ownership is pursuant to a Complaint filed in accordance with condemnation/eminent domain authority with a subsequent Order of a court, provide the full legal citation with the style of the case, forum, date and court assigned number.

The permit holder named in the permit letter and the owner of the land subject to this restrictive covenant, should be the same person or legal entity. If this is not the case, then clarification should be provided.

Clarify agency, partnership, limited liability partnership, company, corporation, subsidiary, trustee, guardian or other relationship of the person or entity to whom the permit was issued, to the declarant as owner of the land. The purpose of clarification is to make clear the relationship between the person/entity to whom the permit or banking instrument may have been issued if different from the declarant.

If the permit holder is an employee of, or in an office or department within a governmental entity, reference the relationship of the named permit holder to the governmental entity named in the deed of title or court order.

PREMISES

WHEREAS, Declarant was issued a (select one) (1) permit, (2) banking instrument, by the US Army Corps of Engineers ("USACE") Action Number (enter permit number, banking instrument number) dated _____ pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) under the administrative regulatory authority of the USACE, Savannah District, Regulatory Branch, setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams; and,

WHEREAS, said (select one) (permit, banking instrument) is attached hereto as Exhibit "B" and by this reference is made a part hereof; and,

Exhibit B - Attach the substantive document/s (1) letter or document authorizing the permitted activity, "the permit" (2) letter or document conditionally authorizing the permitted activity, "the permit," (3) letter authorizing an after-the-fact permit and a settlement agreement or (4) a letter approving and authorizing a banking instrument. An executive summary of the banking instrument may be used in lieu of the entire banking instrument. There may be more than one document such as a conditional permit and a settlement agreement. Do not rely on the USACE Regulatory Branch to furnish copies of the authorizing letters, permit, banking instrument or settlement agreement for use as Exhibit B.

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the Clean Water Act, Section 404, requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, the Property is being preserved, restored, or enhanced as a wetland, buffer to wetlands, stream, streamside buffer, and/or upland buffer to jurisdictional waters of the United States, as well as to non-jurisdictional waters of the United States where such property has been accepted as compensatory mitigation pursuant to the permit; and, (Use this paragraph only with permits and not with banks or sole source tracts.)

WHEREAS, (This language is to be used only with a commercial wetland mitigation bank and not with permits) the Property is approved as a commercial wetland and/or stream mitigation bank pursuant to the terms and conditions of the (Insert the name of the banking instrument and date), said document being incorporated by reference. The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act permit actions. The banking instrument sets forth the success criteria required of the ecological project and the credit releases allowable. Declarant agrees to be responsible for certain restoration, enhancement, and preservation of wetlands and/or stream and streamside lands on the Property pursuant to the banking instrument and any subsequent modifications. Credits from the bank are sold by the bank sponsor in return for a fee agreed upon by the bank sponsor and the permit holder where the Corps of Engineers has approved the use of banking credits as mitigation in whole or in part on permits issued. Each time credits are sold, Declarant shall provide the USACE with an accounting of the total number of credits in the bank, the number of credits released and the permit action associated with each release of credits. The Property is to remain subject to this Declaration of Covenants and Restrictions in perpetuity; and

WHEREAS, (This language is to be used with a mitigation bank owned by a governmental entity and not with permits.) the Property is approved as a wetland and/or stream and streamside lands mitigation bank pursuant to the terms and conditions of the (Insert the name of the banking instrument and date), said document being incorporated by reference. The purpose of the bank is to generate credits for use by (insert the governmental department, county or municipal entity) as mitigation on permit actions where wetland impacts have been determined unavoidable after consideration of avoidance and minimization pursuant to Section 404, of the Clean Water Act. Credits from the bank are used as mitigation in part or in whole on permit actions approved by USACE. The banking instrument sets forth the success criteria required of the ecological project and the determination of credit releases allowable. Declarant agrees to be responsible for certain restoration, enhancement, and preservation of wetlands, or stream and streamside lands on the Property. Declarant will provide USACE with a report of the total amount of credits available for release, credits already released with prior issued permits, and the permit number associated with the credit release, until all credits have been released. The Property is to remain subject to this Declaration of Covenants and Restrictions in perpetuity; and,

WHEREAS, (This language is to be used with sole source, one owner tracts set aside for use with mitigation with multiple permit actions by the owner. Do not use where there is only one permit action.) the Property is approved as a wetland, wetland buffer, upland and/or stream or streamside tract for use by (name the sole source user) as compensatory mitigation in part or in full, on multiple present and future permits, where wetland/stream impacts have been determined unavoidable after consideration of avoidance and minimization pursuant to the Clean Water Act, Section 404. The Clean Water Act, Section 404 permits identified to date as having identified a portion of this tract for compensatory mitigation use are (Identify permits, if any, by number that have used credits or acreage from this sole source mitigation tract.) The Declarant agrees to certain restoration, enhancement, and preservation of wetland, stream and buffers on the Property pursuant to a mitigation plan. Declarant shall keep a total of all credits/acreage available for release and the number of credits/acreage released on previous permits. A report shall be provided to USACE each time credits/acreage is released referencing the associated permit action, and the amount of credits/acreage remaining. The Property is to remain subject to this Declaration of Covenants and Restrictions in perpetuity; and

WHEREAS, a dated platted survey with seal affixed by a Georgia registered surveyor of the bearings and distances and coordinate values of the boundary of the Property has been recorded at (enter the recorded location by plat book, drawer, page or otherwise) The survey also approximately shows the wetlands, streams and buffers on the Property, and easements of record. The survey is made a part of this Declaration and is incorporated by reference.

(Please see the Instructions for surveyors in the general instructions for this Declaration. The survey should be forwarded for review by Office of Counsel prior to recording. The survey should be a boundary survey of all property-- wetland, buffer and/or streams and buffers that will be subject to this restrictive covenant.)

WHEREAS, the property consists of _____ acres in _____ tracts of land; and,

WHEREAS, the environmental conservation functions and values are summarized and described in Exhibit "C", attached hereto and made a part hereof; and

Have the environmental consultant provide a description of the aquatic site and state whether it is riverine, forested, freshwater adjacent to tidal area, isolated, pine flatwood wetland, lake, other impoundment, or otherwise. Provide a description of the vegetation as to whether it is planted or natural or both. State any other conservation functions. Discuss the benefit of upland, wetland buffer or streamside lands to the ecology of the site. Address the biological integrity of the land in the vicinity and the contribution of the restricted area to the ecology of the area.

If an executive summary has been prepared in the mitigation plan approved by the USACE and the mitigation plan addresses the above functions in full, attach the mitigation plan or the executive summary as an exhibit and incorporate by reference.

WHEREAS, the Property has been set aside for its conservation use. If the restricted Property is part of, or in the future made part of, a residential or mixed-use development, the restricted Property will be designated as common property and will not now, nor in the future, be made part of any residential lot or lots in a residential subdivision, but rather the Property shall be held and managed by the owner or homeowner association as common property and/or open, natural and/or scenic and natural green space.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Declarant and each and every subsequent owner and occupant of the real property, and as required mitigation for dredge and/or discharge of fill material in waters of the United States including wetlands and streams, Declarant has promised to place certain restrictions on the Property exclusively for conservation purposes, in order that it shall remain substantially in its open, natural and/or scenic condition in perpetuity.

1

Declarant does hereby declare that all of the Property described hereinafter shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations all of which shall run with the Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the restricted property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or attached and incorporated by reference. It shall not be amended or extinguished except by written approval of the USACE, the Environmental Protection Agency or its successor in administration of the Clean Water Act.

Except as necessary (1) to carry out wetland restoration and enhance the natural habitat; or, (2) to fence the property to keep out livestock, trespassers, or for protection of the property; or, (3) to carry out mitigation, management and maintenance of the property approved by the USACE; the actions encompassed as prohibited by this covenant shall include, but shall not be limited to the following:

- A. Clearing, cutting or mowing;
- B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;
- C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, or agricultural waste on the Property;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;
- E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property;
- F. Mining, drilling;
- G. Burning, systematically removing or cutting or otherwise destroying any vegetation, except for pruning, or removal of diseased or unsafe trees conducted in accordance with current scientifically based practices recommended by the U.S. Forest Service or the Georgia Forestry Commission;
- H. Spraying with biocides;
- I. Introducing exotic species on the Property or otherwise altering the natural state of the wetlands;
- J. Grazing of domesticated animals;
- K. Raising of any structure in the wetlands, streamside buffers or wetland buffers, whether temporary or permanent, except that minimal structures for the observation of wildlife, and wetlands ecology or for use with hunting by the owner and guests, may be constructed with the prior approval of the Savannah District Engineer.
- L. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, signs indicating the property is for sale, signs identifying the

conservation values of the property or their protection, and/or signs identifying the owner of the property.

3

Existing utility lines, road crossings and structures, if any, are shown on the survey. **(List recorded easements or right of ways and the recorded location of said documents.)**

Proposed linear road crossings and utility lines may be constructed on the Property as shown on the survey, or in areas designated on the survey as “proposed right-of-way corridors,” in accordance with permits issued pursuant to the Clean Water Act Section 404. **(Use this paragraph only if the survey shows proposed utility or road crossings or corridors approved by USACE during the application process.)**

4

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Property is in compliance with all federal, state and local laws and there is no pending or threatened litigation in any way affecting, involving or relating to the Property.

5

Declarant, its personal representatives, heirs, executors, administrators, successors and assigns, reserve all other rights accruing from its ownership of the Property including but not limited to the exclusive possession of the property, the right to transfer or assign their interest in the same, the right to take action necessary to prevent erosion on the Property or to protect public health or safety; and the right to use the property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

6

It is expressly understood and agreed that this covenant does not grant or convey to non-owner members of the general public, any rights of ownership, interest in, or use of the protected property.

6

(If Declarant does intend to manage the land for use by the public, for purposes of access to trails or other purposes, restate the terms referencing specifically the planned or intended use of the property in paragraph 6. Plans for use of the mitigation property by the public should be submitted to and approved by the Corps of Engineers project manager at the time the mitigation plan is presented and prior to submitting this draft restrictive covenant for review.)

7

The USACE and/or the Environmental Protection Agency, or its successors, as third party beneficiaries hereof, are hereby specifically granted the authority to enforce the provisions of this Declaration of restrictions and covenants pursuant to the Clean Water Act and implementing regulations. Appropriate remedy for violation of this section is contemplated to include, without limitation, injunctive relief to restrain such violation, restoration, administrative, civil or criminal penalties as well as any other remedy available under law or equity. However, no violation of this covenant shall result in a forfeiture or reversion of title.

8

The USACE, and/or the Environmental Protection Agency shall at reasonable times and upon notice to the owner, have the right of ingress and egress to inspect the property in order to ascertain whether there has been compliance with this Declaration and to monitor compliance of the terms and conditions of the Clean Water Act Section 404 permit.

9

This covenant shall not terminate upon some fixed amount of time, but shall run with the land in perpetuity both as to benefit and as to burden. This covenant is established for the purpose of preserving waters of the United States, including wetlands and streams, non-jurisdictional wetlands and streams used as mitigation, wetland and stream buffers, upland adjacent to the protected property, and the associated aquatic, vegetative, forested and general wildlife habitat. Furthermore, this covenant carries out the statutory requirement of Section 404 of the Clean Water Act (33 U.S.C. §1344) and its implementing regulations.

10

Declarant shall execute and record this instrument in timely fashion in the Office of the Clerk of Superior Court in the county in which this Property is located and provide the USACE with a copy of the recorded restrictive covenant and exhibits.

IN WITNESS WHEREOF Declarant has duly executed this covenant on this the ____ day of _____. (See directions on next page for signature page.)

7

Directions for Signature Page

(1) The signature should be made by the owner/s-declarant/s. All holders of title to the property should sign. If owner is married, both spouses should sign. Type the full names/s and title below the signature line.

(2) Prepare the signature page according to the legal authority of the declarant to sign and state the capacity in which the person/s is signing and the entity for which it is signed. If signing for a corporation, provide a Certificate of Corporate Authority. If prior approval by resolution and adoption of a county commission, governing body of a municipality or other government entity is required, provide copies of the resolution and adoption documents.

(3) Provide for signature/s to be signed sealed and delivered in the presence of an unofficial witness and a notary public affixing seal. Provide that the (declarant) personally appeared before (the notary public), the undersigned witness, and notary makes oath that (he/she) saw the within named, sign the Declaration of Covenants and Restrictions, and that (he/she) with the other witness named above witnessed the execution thereof. Provide the street address, city, state, and zip code, of the owner. Prepare a draft signature page but do not have it executed until the entire document and exhibits are approved.

Deeds To Secure The Debt

If the property is encumbered with a deed to secure debt, prepare a "Consent and Joinder" signature page for purposes of having the holder of a deed to secure debt, consent and join in this Declaration of Restrictive Covenant and providing subordination of the deed to secure debt, to the covenant.

Submit For Approval prior to Recording

Request a review of the declaration of restrictive covenants by the Office of Counsel, Rebecca Rowden, Assistant District Counsel, US Army Corps of Engineers, 100 W. Oglethorpe Ave., Savannah, Ga. 31402-0889. Please reference the US Army Corps of Engineers permit number/banking instrument number as provided on correspondence. Provide the name, telephone and mailing address of the attorney who is the point of contact for this draft document. The Office of Counsel will provide a written letter of approval with information regarding recording. For questions regarding this document, call Office of Counsel call 912-652-5123.

Forwarding Copy of Final Recorded Document

Upon receipt by the Savannah District Office of Counsel, of a copy of the recorded Declaration of Restrictive Covenant properly executed, and showing book and page numbers of its recorded location, the restrictive covenant requirement of the permit action, banking instrument or settlement agreement will be completed.